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10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN FRANCISCO DIVISION

13
14 UNITED STATES OF AMERICA,) No. CR 11-0155 SI
15 Plaintiff,) GOVERNMENT'S SENTENCING
16 v.) MEMORANDUM
17 MAURICE MICHAEL MCCANT,) DATE: August 3, 2012
18 Defendant.) TIME: 11:00 a.m.
19 Honorable Susan Illston

20 The plea agreement reached by the parties resulted from a lengthy settlement conference
21 conducted by Magistrate Judge Spero. Judge Spero worked tirelessly with the parties both
22 separately and together. During the settlement conference, Judge Spero focused both parties on
23 the respective strengths and weaknesses of their case. The plea agreement that was submitted to
24 this Court reflects the parties' and Judge Spero's collective consensus as to a fair and just
25 resolution of this case. Accordingly, the government respectfully requests that the Court accept
26 the Plea Agreement proposed under F.R.Cr.P. Rule 11(c)(1)(C) and sentence defendant to 36
27 months in prison, 3 years of supervised release, no fine, restitution in an amount to be determined
28 by the Court, and the mandatory special assessment of \$400.

GOVT. SENT. MEM.;
CR 11-0155 SI

1 **I. The Offense Conduct**

2 As detailed in the thorough Presentence Investigation Report (PSR), for more than two
3 years defendant operated a Ponzi scheme. He solicited more than 10 investors through two
4 primary methods: (1) by promising them a return of 30% if they invested in his business which
5 ostensibly promoted rap music concerts; and (2) by promising at least two of the victims (Bernice
6 Tingle and Velma Chavez) that he would pay all state and federal taxes associated with the
7 liquidation of their IRA funds, if the victims were to liquidate their IRAs and invest that money
8 with defendant.

9 In fact, defendant did not put use his investors' money for the promotion of rap concerts.
10 Instead, defendant spent the victims' money on personal expenses, used it to pay back other
11 investors, or to pay mortgages for real estate owned by others. All the while, however, he
12 consistently wined and dined his victims and lulled them into making further investments by
13 making some payments to early investors. Through these methods, defendant fleeced more than
14 10 victims out of at least \$2.5 million, returning more than \$400,000 along the way as "returns
15 on the investment," thus causing losses of more than \$2 million.

16 As is typical in Ponzi scheme cases, when victims began asking for their funds to be
17 returned, defendant stalled and came up with excuses. What is not so typical, however, is the
18 dire financial hardship that resulted for the innocent victims of defendant's fraudulent schemes.
19 Many examples of the hardships suffered by the victims are set forth in the multiple Victim
20 Impact Statements the Court has received. Many victims have indicated that they wish to
21 personally address the Court at the sentencing hearing to convey the long-term damage they have
22 suffered as a result of having been swindled by the defendant

23 **II. The Plea Agreement**

24 On March 30, 2012, defendant plead guilty to all counts of the indictment which charged
25 him with wire fraud. In the Plea Agreement, the parties agreed the Base Offense Level is 7, a
26 16-level increase applies because defendant caused losses of more than \$1 million but less than
27 \$2.5 million, a 2-level increase applies because there were more than 10, but less than 50 victims
28 of defendant's fraud, and a 3-level decrease applies due to defendant's acceptance of

1 responsibility. This results in a Total Offense Level of 22 and defendant's Criminal History
2 Category is II. Thus, the applicable Sentencing Guidelines range of imprisonment is 46—57
3 months. The Probation Office agrees with these calculations.

4 In the Plea Agreement, which is proposed under Federal Rule of Criminal Procedure
5 11(c)(1)(C), the parties propose an agreed-upon sentence of imprisonment of 36 months, which is
6 a 10 month variance from the low end of the applicable guideline range for an offense level 22
7 and a criminal history category II.

8 **III. A Sentence of 36 Months In Prison is Fair and Reasonable**

9 A 10 month variance from the low end of the Guideline range resulting in a 36 month
10 sentence of imprisonment is appropriate in this case. Defendant perpetrated a significant
11 fraudulent scheme over several years which devastated his victims. As is the case in all fraud
12 schemes, the victims have suffered—and will continue to suffer—far more than merely
13 financially. In addition to lost retirement savings, the victims have expressed their inability to
14 trust their own judgment or to trust others, the need to seek counseling and therapy, the
15 embarrassment of revealing their losses to family members, a sense of anguish that should be felt
16 only by the defendant, not by any victim. The consequences of defendant's long-running pattern
17 of deceit will last far longer than the 3 year prison term proposed by the parties.

18 In mitigation, the defendant has accepted responsibility for his crimes by pleading guilty
19 to all counts in the indictment. The defendant did not litigate the validity of the state court search
20 warrant or any other aspect of the government's case and plead guilty early enough to save the
21 government and the Court significant resources. Under these circumstances and because of the
22 risks both sides faced if this case had proceeded to trial, the government respectfully urges the
23 Court to accept the plea agreement facilitated by Judge Spero during the settlement conference.

24 **IV. Restitution**

25 The parties have not agreed on the amount of restitution. The parties have agreed to have
26 this Court determine the amount of restitution after submissions to the Court by both parties.
27 The government respectfully requests the Court to set a date 45 days from sentencing for the
28 parties to file pleadings in support of the amount of restitution that should be imposed. The

1 Court has up to 90 days after sentencing to make a final determination of restitution. *See* 18
2 U.S.C. § 3663(d)(5).

3 **V. Conclusion**

4 For these reasons and those set forth in the thorough PSR, the government respectfully
5 requests the Court to accept the proposed Plea Agreement and to sentence defendant to 36
6 months in prison, 3 years of supervised release, no fine, restitution in an amount to be determined
7 by the Court, and the mandatory special assessment of \$400.

8 DATED: July 27, 2012

9 Respectfully submitted,

10 MELINDA HAAG
11 United States Attorney

12 _____/s/
13 ROBIN L. HARRIS
14 Assistant United States Attorney